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Report

drawn up on behalf of the Legal Affairs Committee

on custody and abduction of children across
national borders

Rapporteur: Mrs M.-C. VAYSSADE

PE 84.865/fin.

At its sitting of 15 November 1982, the European Parliament referred the motion for a resolution tabled by Mr Moreland on custody cases and abduction of children across national borders (Doc. 1-753/82) to the Legal Affairs Committee as the committee responsible and to the Committee on Youth, Culture, Education, Information and Sport for an opinion.

At its meeting of 24 November 1983, the Legal Affairs Committee appointed Mrs Vayssade rapporteur.

At its sitting of 11 April 1983, the European Parliament referred the motion for a resolution tabled by Mrs Lizin on measures to protect child victims of abduction (Doc. 1-53/83) to the Legal Affairs Committee.

The Legal Affairs Committee appointed Mrs Vayssade rapporteur at its meeting on 26 May 1983.

The committee examined the draft report at its meeting of 1 and 2 February 1984 and adopted it unanimously at this meeting.

The following were present for the vote: Mrs VEIL, Chairman; Mr LUSTER, Vice-chairman; Mrs VAYSSADE, rapporteur; Mr ARNDT (deputizing for Mrs MACCIOCCHI), Mr DE GUCHT, Mr EPHREMEDIS, Mr GEURTSSEN, Mr GONTIKAS, Mr PRICE, Mr PROUT, Mr MORELAND (deputizing for Mr DALZIEL), Mr SIEGLERSCHMIDT, Mr VETTER and Mr VIE.

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The opinion of the Committee on Youth, Culture, Education, Information and Sport is attached.

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This report was tabled on 7 February 1984.

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The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on custody and abduction of children across national borders

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Moreland on custody cases and abduction of children across national borders (Doc. 1-753/82),
- having regard to the motion for a resolution tabled by Mrs Lizin on measures to protect child victims of abduction (Doc. 1-53/83),
- having regard to the report of the Legal Affairs Committee and the opinion of the Committee on Youth, Culture, Education, Information and Sport (1-1396/83),

1. Notes that the majority of children abducted across national borders are kept in third countries;
2. Observes that the Council of Europe Convention of 20 May 1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children and the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children provide the appropriate legal instruments for the protection, within the Community, of children who are victims of a breach of the right of custody;
3. Calls upon the Member States, therefore, to ratify these two conventions as soon as possible;
4. Hopes, moreover, that the Community will encourage as many third countries as soon as possible to ratify the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children;
5. Instructs its President to forward this resolution to the Member States, the Council and the Commission.

EXPLANATORY STATEMENT

I. Introduction

1. The legislation of the EEC Member States lays down provisions on the custody of children in cases of separation or divorce.

These measures are frequently supplemented and strengthened by provisions of criminal law.

However, as shown by many current examples, this national legislation can be rendered useless where a person does not comply with a decision concerning custody of children and settles in another country.

2. For this reason, a need has been felt to establish international and European cooperation in this field which has now resulted in the drawing-up of conventions and the establishment of mechanisms laid down in such conventions.

The motion for a resolution tabled by Mr Moreland expresses this concern and requests the EEC Member States to sign and ratify both the Council of Europe and the Hague Conventions.

In addition, it requests the Member States to ensure that their national legislation provides for custody in which the overwhelming emphasis is given to the best interests of the child and does not discriminate in favour of a parent on the basis of nationality.

In her motion for a resolution Mrs Lizin calls for strict rules on visiting rights in such cases, harmonization of measures of protection and a European Convention to be drawn up to provide protection.

II. Possible solutions

A. The Council of Europe Convention of 20 May 1980

3. The European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, which was drawn up within the Council of Europe, was opened for signature on 20 May 1980¹.

¹ The convention entered into force on 1 September 1983; it has been signed by all the Member States of the European Community except Denmark, and ratified by France and Luxembourg, as well as Switzerland and Portugal.

The convention first of all refers to the improper removal of a child across an international frontier where the child and his or her parents have as their sole nationality the nationality of the State in which the decision relating to custody was given and in which the child has his or her habitual residence (Article 8(1)).

It also refers to the failure to bring the child back after a period during which he or she has been taken abroad in breach of an existing provision (Article 8(3)).

Recognition and enforcement may be refused if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family in the State addressed or the child is settled in its new environment or has but few links with the State of origin (Article 10)¹.

4. Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognized or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State. This authority may refuse to intervene where it is manifestly clear that the conditions laid down are not satisfied.

It must keep the applicant informed without delay of the progress of his application (Article 4).

The authority must take without delay all appropriate steps to discover the whereabouts of the child, avoid prejudice to the interests of the child or of the applicant and secure the recognition or enforcement of the decision (Article 5).

The request must be accompanied by various supporting documents and if possible a statement indicating the likely whereabouts of the child in the State addressed as well as proposals as to how the custody of the child should be restored (Article 13).

The Convention will come into force when three Member States of the Council of Europe have expressed their consent to be bound by it (Article 22).

¹ Articles 17 and 18 allow Member States to make reservations with regard to these provisions.

B. The Convention on the Civil Aspects of International Child Abduction

5. Within the context of the Hague Conference on Private International Law, a convention was drawn up and opened for signature on 25 October 1980. The object of this convention is to secure the prompt return of children wrongfully removed to or retained in any Contracting State and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State (Article 1).

The removal or the retention of a child is considered wrongful where it is in breach of rights of custody attributed under the law of the State in which the child was habitually resident and these rights were actually exercised (Article 3).

This convention also provides for the designation of a Central Authority to discharge the duties which are imposed by the convention (Articles 6 and 7).

It lays down the procedure for the return of the child and lists the formalities to be completed and the measures which must be taken by the State addressed (Articles 8 to 12).

The judicial or administrative authority of the State addressed is not bound to order the return of the child if the person who opposes its return establishes that the right of custody was not actually exercised or that consent had been given subsequently to the retention of the child.

The same applies where there is a grave risk that the return of the child would expose it to physical or psychological harm or to an intolerable situation.

The return of the child may also be refused if he or she objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views (Article 13).

Any State may accede to this convention¹ (Article 38).

6. These two international conventions to protect children against the effects of wrongful removal are complementary and should not in principle prove to be incompatible.

The Council of Europe Convention relates to the recognition and enforcement of decisions and the restoration of custody of children whereas the Hague Convention refers to the wrongful abduction of children.

¹ This convention has been ratified by France, Portugal, Switzerland and Canada; it has been signed, but not yet ratified, by Belgium, Greece and the United States (as at 11 January 1984).

It is clear that in content these two instruments are broadly in line with the concerns expressed in the two motions for resolution.

Within the Community context it seems extremely desirable for the Member States to ratify these two conventions as quickly as possible.

In addition, the problem of the custody of children has also been the subject-matter of studies within the Community Institutions. The Commission has in fact submitted an interim report¹ and a final report² to the Council on the custody of children in implementation of a Council decision of 9 October 1978.

These reports were, as it happens, drawn up with a view to the adoption of the Convention by the Committee of Ministers of the Council of Europe.

¹ COM(79) 321 final

² Dated 17 April 1980

talbed by Mr Moreland

pursuant to Rule 47 of the Rules of Procedure

on custody cases and abduction of children across national borders

The European Parliament,

- A - concerned at the anguish to the families of children in custody cases,
 - B - concerned that abduction can exist across national boundaries without redress,
 - C - noting that most Member States are signatories to the Council of Europe's 'European Convention on the recognition and Enforcement of Decisions concerning the custody of children and on the restoration of the custody of children' although only France has ratified the Convention,
 - D - notes that the Hague Conference on Private International Law has opened for signature a Convention on the Civil Aspects of International Child Abduction which provides that a child abducted from one parent by the other should be restored to the former, whether this parent has the custody order or not,
- 1 Calls on Member States to sign and ratify both the Council of Europe and Hague Conventions;
 - 2 Calls on all Member States to ensure that their national legislation provides for custody in which the overwhelming emphasis is given to the best interests of the child and does not discriminate in favour of a parent on the basis of nationality;
 - 3 Requests its President to forward this Resolution to the Commission and the Council of the European Communities and to the governments and parliaments of the Member States.

tabled by Mrs Lizin

pursuant to Rule 47 of the Rules of Procedure

on measures to protect child victims of abduction

The European Parliament,

- A. having regard to the large and increasing number of mixed marriages, which, when they fail, result in the children being torn between parents of different nationalities, particularly in those marriages where the husband is a Moslem,
- B. having regard to the considerable number of cases of children being abducted by the parent who has not been given custody (in 99% of cases the husband), when exercising visiting rights,
- C. in view of the present inadequacy of the law in some states to defend the rights of European children and mothers,

Calls for:

- strict rules on visiting rights in Member States for such cases;
- harmonization of measures of protection;
- a European Convention to be drawn up to provide protection in such cases.

OPINION OF THE COMMITTEE ON
YOUTH, CULTURE, EDUCATION, INFORMATION AND SPORT

Letter from the Chairman of the Committee to Mrs Veil,
Chairman of the Legal Affairs Committee.

Subject: Motion for a resolution on custody cases and abduction of
children across national borders (Doc. 1-753/82)

Dear Madam Chairman,

At its meeting of 16 and 17 March 1983, the committee of which I am
chairman considered the motion for a resolution on custody cases and abduction
of children across national borders, on which it was requested to give its
opinion to your committee.

After considering the resolution, it adopted the following conclusions:

The Committee on Youth, Culture, Education, Information and Sport:

1. Expresses its acute concern at the growing number of cases in which
children are abducted across national borders, frequently by parents,
and stresses the anguish and major human problems inflicted on the
children concerned;
2. Stresses that the Community as such cannot remain indifferent to this
state of affairs and is duty-bound to encourage schemes and take the
measures which are called for;
3. Notes the existence of international and European legal provisions
governing this problem, which have, however, not been signed and
ratified by certain Member States and therefore do not apply there;
4. Requests the Legal Affairs Committee, therefore, to give its attention
to these problems and propose the necessary solutions, emphasizing that
under no circumstances should national provisions discriminate in
favour of one or other of the parents on the grounds of nationality and
that the interests of the child should always be the leading consider-
ation in such cases;

The following took part in the vote:

Mr BEUMER, chairman, Mr HAHN, vice-chairman, Mrs BUCHAN, Miss BROOKES,
Mr GEROKOSTOPOULOS, Mr MOMMERSTEEG (deputizing for Mr PEDINI), Mr PAPAPIETRO
(deputizing for Mr FANTI), Mr PATTERSON (deputizing for Mr COTTRELL)
Mr SIMMONDS, Mr VANDEMEULEBROUCKE (deputizing for Mr BØGH) and Mrs VIEHOFF.

Yours sincerely,

(sgd) Bouke BEUMER
Chairman